



POLICE DEPARTMENT

March 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Gustavo Medina
Tax Registry No. 942180
Narcotics Borough Bronx
Disciplinary Case No. 2014-11773

Detective Ivelisse Rodriguez
Tax Registry No. 933533
Firearms Suppression Division
Disciplinary Case No. 2014-11771

The above-named members of the Department appeared before me on
November 12, 2014, charged with the following:

Disciplinary Case No. 2014-11773

1. Said Detective Gustavo Medina, on or about March 23, 2013, at approximately 1845 hours, while assigned to Narcotics Borough Bronx, and on duty, in the vicinity of West 165th Street and Ogden Avenue, Bronx County, abused his authority as a member of the New York City Police Department in that he stopped Vincent Everett and Charlene Brooks without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

2. Said Detective Gustavo Medina, on or about March 23, 2013, at approximately 1845 hours, while assigned to Narcotics Borough Bronx, and on duty, in the vicinity of West 165th Street and Ogden Avenue, Bronx County, abused his authority as a member of the New York City Police Department in that he searched Vincent Everett without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

Disciplinary Case No. 2014-11771

1. Said Detective Ivelisse Rodriguez, on or about March 23, 2013, at approximately 1845 hours, while assigned to Narcotics Borough Bronx, and on duty, in the vicinity of West 165th Street and Ogden Avenue, Bronx County, abused her authority as a member of the New York City Police Department in that she stopped Vincent Everett and Charlene Brooks without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

2. Said Detective Ivelisse Rodriguez, on or about March 23, 2013, at approximately 1845 hours, while assigned to Narcotics Borough Bronx, and on duty, in the vicinity of West 165th Street and Ogden Avenue, Bronx County, abused her authority as a member of the New York City Police Department in that she frisked Charlene Brooks without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

3. Said Detective Ivelisse Rodriguez, on or about March 23, 2013, at approximately 1845 hours, while assigned to Narcotics Borough Bronx, and on duty, in the vicinity of West 165th Street and Ogden Avenue, Bronx County, abused her authority as a member of the New York City Police Department in that she searched Charlene Brooks without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

4. Said Detective Ivelisse Rodriguez, on or about March 23, 2013, at approximately 1845 hours, while assigned to Narcotics Borough Bronx, and on duty, in the vicinity of West 165th Street and Ogden Avenue, Bronx County, abused her authority as a member of the New York City Police Department in that she wrongfully and without just cause failed to courteously and clearly state her shield number when requested by Vincent Everett.

P.G. 203-09, Page 1, Paragraph 1 – PUBLIC CONDUCT - GENERAL

The Civilian Complaint Review Board was represented by Carrie Eicholtz, Esq.

Respondents were represented by Michael LaCondi, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2014-11773

Respondent Medina is found Not Guilty.

Disciplinary Case No. 2014-11771

Respondent Rodriguez is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Civilian Complaint Review Board's Case

The Civilian Complaint Review Board (CCRB) called Vincent Everett and Charlene Brooks as witnesses.

Vincent Everett

Everett testified that on March 23, 2013, at around 6:00 p.m., he and Charlene Brooks went to a beauty supply store located on 165th Street and Nelson Avenue, the Bronx. When they exited the store, they walked toward the intersection of 165th Street and Ogden Avenue where they were stopped by two plainclothes officers, one male and one female, who got out of an unmarked blue van. During his testimony in the Trial Room, he identified Respondent Rodriguez and Respondent Medina as the two officers who had stopped Brooks and him. Respondent Rodriguez ordered him to put his hands up and he complied. Respondent Medina searched him by going through all of his pants and jacket pockets. He also stuck his hand down and around his sneaker and patted him down between his legs and on the back of his legs. Everett had a hairbrush in his right side jacket pocket and his wallet and keys in his pants pocket. Everett testified that while

Respondent Medina was searching him, Respondent Rodriguez was yelling at Brooks and telling her that she knew her and that she had stopped her before. Respondent Rodriguez then turned to Everett and began yelling at him that she could not wait to get him and get in his house. No contraband was recovered on him or on Brooks. Everett asked Respondent Rodriguez for her shield number, but Respondent Rodriguez told him to get it somehow or somewhere and continued walking.

That same day, Everett went to the 44 Precinct to file a complaint against Respondents. Everett described Respondents and the van they were driving to the desk officer. The desk officer wrote down Respondent Rodriguez' name and shield number on a piece of paper and handed it to Everett. Some time after this incident, Everett went to CCRB to have this case mediated between Respondent Rodriguez and himself so that he could learn why Respondent Rodriguez was angry with him but the case was not mediated.

On cross-examination, Everett stated that he does not have any problems with the police. He acknowledged that in 1979 he pleaded guilty to the unauthorized use of a vehicle; that in 1981 he was convicted of robbery in the first degree for which he received a sentence of two to six years in prison; and that in 1997 he was convicted of Assault in the Second Degree for which he received a sentence of seven years to life in prison.

In 2009, he was arrested and eventually pleaded guilty to disorderly conduct. On that day, Respondent Rodriguez arrived at the arrest scene. Respondent Rodriguez was not the arresting officer but she "whipped out a stick."

On August 25, 2012, he and Respondent Rodriguez had an interaction. He denied that Respondent Rodriguez recovered heroin from his pocket. He did not recall if

Respondent Rodriguez went into his pocket during the incident. Someone called Respondent Rodriguez to the scene.

Everett testified that on March 23, 2013, it was Respondent Medina who had searched him, not Respondent Rodriguez. Everett did not recall calling the Internal Affairs Bureau (IAB) to report that Respondent Rodriguez had searched him on March 23, 2013. The transcript of the telephone call by Everett to IAB shows that Everett told the IAB investigator that "she [Respondent Rodriguez] just told me to put my hands up and went through my pockets."

Everett testified that on March 23, 2013, Respondent Rodriguez did not throw him up against anything. During a telephone interview with CCRB on April 1, 2013, Everett told the interviewer that "she [Respondent Rodriguez] throws me up on the..." (the rest of this conversation was cut off). Everett did not recall saying this. Everett recalled another incident where Respondent Rodriguez threw him up against something. Before March 23, 2013, Everett had two or three interactions with Respondent Rodriguez.

During a March 25, 2013 IAB interview, Everett stated Respondent Rodriguez "keeps harassing me," and "she [Respondent Rodriguez] stops me in the street every time she sees me. She sits in front of my door." Everett asserted that he has been stopped two or three times by Respondent Rodriguez.

On April 8, 2013, Everett stated to a CCRB investigator that he had been told that Respondent Rodriguez "plants things on people, and you know, she does things like that to people." Everett explained that individuals who live in his neighborhood told him this.

Charlene Brooks

Brooks recalled that on March 23, 2013, as she and Everett were walking toward 165 Street and Ogden Avenue, a blue van pulled up and they were stopped by two officers, a short, stocky "Spanish" female officer with either short or pulled back hair and a taller, stocky, male officer. The female officer told Brooks to stop, came toward Brooks and started "patting me." Brooks testified that female officer patted her jacket pockets and searched her pant pockets. Money and an ATM receipt were removed from her pants pocket.

Brooks testified that the female officer told her "you know me" and "I frisked you before," and that she responded, "You don't know me" and "I've never been frisked." Brooks testified that the female officer also told Everett that he knew her and that Everett was the "fast one." Brooks was not given a reason for being stopped.

Brooks testified that she did not see what was going on between the male officer and Everett because she concentrated on the female officer and her attention was focused on her.

On cross-examination, Brooks agreed that she had never seen the male officer or the female officer before March 23, 2013, and that did not see the male officer or the female officer after March 23, 2013.

On redirect examination, Brooks explained that she did not observe the male officer's interaction with Everett because she was more concerned with the money she had in her pocket and the female officer searching her, and that she did not hear any conversation between Everett and the male officer because the female officer was constantly talking.

Respondents' Case

Respondent Rodriguez testified in her own behalf and Respondent Medina testified in his own behalf.

Respondent Rodriguez

Respondent Rodriguez testified that she has been involved in two of Everett's arrests. Respondent Rodriguez was present when Everett was arrested in 2009 for possession of a controlled substance. She was assigned to the prisoner transport van on that day. In August, 2012, Respondent Rodriguez personally recovered heroin from Everett but another officer arrested Everett. Respondent Rodriguez testified that she would occasionally see Everett on the street and that every time they would see each other, Everett would say to her, "You guys don't have anything fucking better to do" and "there goes that bitch again."

Respondent Rodriguez recalled that on March 23, 2013, her tour was 2:27 p.m. to 11:00 p.m. She was assigned to the prisoner transport van, with Respondent Medina as her partner, safeguarding prisoners as they were taken into custody. The prisoner van is a blue, unmarked vehicle without windows. She was wearing jeans and a black jacket over her vest. At about 6:40 p.m., she was doing an observation on the Grand Concourse. The Grand Concourse is on the east side of the precinct and is over 25 blocks away, about a 10 or 15 minute drive depending on the traffic, from the intersection of 165 Street and Ogden Avenue. The observation at the Grand Concourse ended at about 7:15 p.m. and she then traveled one block to 1416 Wythe Place. Respondent Rodriguez did not think it was possible that she had passed 165 Street and Ogden Avenue on the way to Wythe

Place. Respondent Rodriguez denied that she had any interaction with Everett or Brooks on March 23, 2013.

On cross-examination, Respondent Rodriguez confirmed that she made an arrest at 8:45 p.m. Although Respondent Rodriguez's tour was scheduled to end at 11:00 p.m., she remained on duty until 1:00 a.m. [Notice was taken that Google map indicated a five minute driving time and a 16 block distance between 1460 Grand Concourse and the intersection of 165 Street and Ogden Avenue] Respondent Rodriguez stated that she recognized Brooks when she entered the Trial Room to testify only because she had seen Brooks pick up Everett's property from the precinct after Everett was arrested in 2012.

On redirect examination, Respondent Rodriguez testified that if she had frisked Brooks on March 23, 2013, she would have prepared a Stop Question and Frisk Report and made pertinent entries documenting her action in her Activity Log.

Respondent Medina

Respondent Medina had the same assignment and worked the same tour as his partner Respondent Rodriguez on March 23, 2013. At about 6:45 p.m., he and Respondent Rodriguez were doing an observation but he could not recall what their location was. He stopped an individual that day on College Avenue which resulted in an arrest. The first time he ever saw Everett or Brooks was when they entered the Trial Room to testify at this trial.

On cross-examination, Respondent Medina agreed that on March 23, 2013, he made his first Activity Log entry at 2:27 p.m., that he was present for duty, and that he made his second entry at 8:45 p.m., that he was present at College Avenue regarding an

arrest. Respondent Medina confirmed did not make any entries between 2:27 p.m. and 8:45 p.m. However, he recalled that at 6:45 p.m., he was doing an observation. If he had stopped someone that day, he would have recorded it in his Activity Log.

FINDINGS AND ANALYSIS

Since Respondent Medina and Respondent Rodriguez have consistently asserted that they had no interaction whatsoever with Everett and Brooks on March 23, 2013, the CCRB prosecutor was required to present credible evidence to prove not only that Everett and Brooks were stopped that day, but also that Respondents were the officers who stopped them.

Although Brooks corroborated Everett's (who she described as her "significant other") claim that two officers had stopped them, Brooks never identified either Respondent Medina or Respondent Rodriguez as one of the officers who stopped her and Everett. I find that the fact that Brooks was not asked by the CCRB prosecutor to look around the trial room to see if the female officer who stopped her was present in the trial room is significant because Brooks testified that she concentrated on the female officer, that her attention was focused on her, and that she and the female officer engaged in a back-and-forth conversation. Brooks testified that the female officer told her "you know me" and "I frisked you before," and that she responded, "You don't know me" and "I've never been frisked." Thus, the face of the female officer who frisked her should have been memorable to Brooks, especially since she testified that this was the first time that she had ever been frisked, and Respondent Rodriguez was the only female seated at Respondents' table in the trial room.

The only non-circumstantial evidence that the CCRB prosecutor presented at this trial to prove that Respondents were the two officers who stopped Everett and Brooks on March 23, 2013, was Everett's Trial Room corporeal identifications of the two Respondents; and the only evidence the CCRB prosecutor presented at this trial to prove that Respondent Medina searched Everett was Everett's own testimony since Brooks testified that she did not see what was going on between the male officer and Everett.

An evaluation of the believability of Everett's claim that Respondent Medina abused his authority by stopping him and searching him must begin by taking notice of Everett's extremely serious criminal history which includes convictions for Robbery in the First Degree, for which he received a sentence of two to six years in prison, and Assault in the Second Degree, for which he received a sentence of seven years to life.

Moreover, Everett's claim that Respondent Rodriguez was one of the officers who stopped him and Brooks must be questioned in light of Everett's acknowledgment that he and Respondent Rodriguez have a past and his claim that she has harassed him. It is not disputed that although Respondent Rodriguez was not the arresting officer, she was present at the scene when Everett was arrested in 2009 and in 2012. Most significantly, Everett told an IAB investigator that Respondent Rodriguez "keeps harassing me" by "stop[ping] me in the street every time she sees me," and he told CCRB that he had been told by others that Respondent Rodriguez "plants things on people." These statements show that Everett had a strong motive to want to make trouble for Respondent Rodriguez.

Also, the inconsistencies between Everett's trial testimony and his previous statements to CCRB and IAB not only raise questions about his credibility, they indicate that he initially embellished what the female officer had supposedly done to him. Everett

testified at this trial that only the male officer went through his pockets. However, Everett told IAB that “*she* (emphasis added) just told me to put my hands up and went through my pockets.” Also, Everett testified at this trial that he was not thrown up against a car or anything else. However, during a recorded telephone interview, Everett told CCRB that “*she* (emphasis added) throws me up on the (inaudible).”

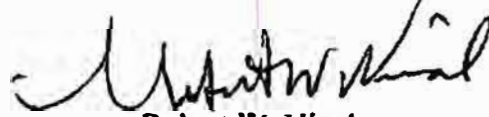
Based on the above, I find that Everett’s claim that Respondent Medina and Respondent Rodriguez were the officers who stopped him and Brooks does not constitute sufficiently credible evidence to support a guilty finding.

Finally, the CCRB prosecutor argued that circumstantial evidence established that Respondents had to be the officers who conducted this stop. The CCRB prosecutor noted that Respondents were on duty, in the Bronx, dressed in plainclothes, assigned to an unmarked, blue-colored van during the time period on March 23, 2013, when Everett and Brook assert they were stopped intersection of West 165th Street and Ogden Avenue, in the Bronx, by a male plainclothes officer and a “Spanish” female plainclothes officer who got out of a blue van. However, Narcotics Borough Bronx is not the only command which has plainclothes officers conducting street operations in the Bronx and CCRB offered no evidence that Respondents were the only one male, one female team on duty in the Bronx, dressed in plainclothes, operating an unmarked, blue-colored van on March 23, 2013. Thus, I find CCRB did not establish an exclusive opportunity case that Respondents had to have been the officers who stopped Everett and Brooks.

Based on the above analysis, even if I credited Brooks’ claim that she and Everett were stopped by two officers on March 23, 2013, I find that CCRB did not meet its

burden of proving by a preponderance of the credible evidence that Respondents were the officers who conducted this stop. Therefore, Respondents are found Not Guilty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

JUN 1-9 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER